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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/670,875      | 09/25/2003  | James A. Stokes      | 22564/09000         | 5774             |

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| EXAMINER |
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SMITH, KIMBERLY S

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| ART UNIT | PAPER NUMBER |
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3644

DATE MAILED: 03/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/670,875

Applicant(s)

STOKES ET AL.

Examiner

Kimberly S Smith

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 09/25/03.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. The term "larger than an expected cross-section width" in claim 1 is a relative term which renders the claim indefinite. The term "larger than an expected cross-sectional width" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. One with skill in the art would not be able to determine the metes and bounds of the claim as there is no range in which an animal may be expected to burrow a hole and therefore the width of the anchor cannot be positively ascertained.

4. Regarding claim 7, it is unclear as to whether the harness claimed is the same harness as previously claimed in the independent claim 1.

5. Claim 10 recites the limitation "the pet" in 6. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3644

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-3, 7, 8, 10, 12-14, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Killion, US Patent 5,358,258.

Killion discloses a tether line (60), a harness (10), a connector (50) and a restraint anchor (20); wherein the connector comprises a snap bolt and a swivel eye (as positively viewed in Figure 4); wherein the anchor is a semi-rigid deformable, hollow sphere; wherein the harness connects to the pet restraint device through the connector; wherein the harness is a break-away collar (as the attachment of the collar is a hook and loop fastener, the collar is considered break-away as the hook portion will separate from the loop portion upon exertion of a given amount of force); wherein the harness is a collar; wherein the harness releasably attaches the tether is releasably attached.

Regarding claim 9, the restraint anchor defines respective widths in at least two orthogonal dimensions that are larger than a width of a pets shoulders, as numerous animals have a shoulder width less than that of a soccer ball.

Regarding claim 14, Killion discloses the connector comprising a manually releasable clasp disposed at one end and a non-releasable clasp disposed at an opposite end (as detailed in Figure 4).

Regarding claim 17, Killion discloses the tether line is an elastic material

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 4, 5, 15, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Killion, US Patent 5,358,258.

Killion discloses the invention substantially as claimed. However, Killion does not disclose the tether line being made of polyvinyl chloride line, a steel cable or a metal alloy material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use either polyvinyl chloride line or a steel cable, since applicant has not disclosed that the material for the tether line solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with any material for the tether line. Attention is drawn to paragraph [013] of the instant application in which it is stated that the line may be formed from an elastic or inelastic material.

Regarding claims 15 and 16, Killion discloses the invention substantially as claimed. However, Killion does not positively disclose the material from which the restraint anchor is formed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a semi-deformable polymer, particularly rubber, for the restraint anchor, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Art Unit: 3644

10. Claims 6 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Killion as applied to claims 1 and 10 above, and further in view of Schaubach, US Patent 6,142,889.

Killion discloses the invention substantially as claimed. However, Killion does not disclose the use of a sleeve that surrounds the tether line. Schaubach teaches within the same field of endeavor the use of a sleeve (20) to protect the tether line from damage and to prevent tangling of the tether line. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the teaching of Schaubach's sleeve with the device of Killion in order to provide a protective barrier for the tether line and to prevent tangling of the tether line.

11. Claims 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Killion as applied to claims 7 and 10 above, and further in view of Reichert, US Patent 4,247,117.

Killion discloses the device substantially as claimed. While it is noted that the restraining device of Killion is capable of placement about the shoulder of the intended user, Reichert teaches that it is known to use a shoulder harness as traditionally defined in tethering a restraint anchor to a body. As these two restraining devices were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the shoulder harness as taught by Reichert for the harness as disclosed by Killion.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Carey (US 4,687,209), Petrusek (US 4,121,829), Supowitz (US 2,941,504), Hauter (US 5,586,760), Allred et al. (US 5,916,046), Gerard (US 229,691).

Art Unit: 3644

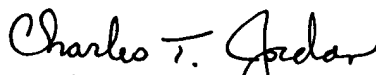
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 703-308-8515.

The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T Jordan can be reached on 703-306-4159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

kss

  
**CHARLES T. JORDAN**  
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